

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SFR Investments Pool 1, LLC,

Case No.: 2:22-cv-00411-JAD-DJA

Plaintiff

V.

Newrez LLC dba Shellpoint Mortgage
Servicing; et al.,

Order Granting in Part SFR's Motion to Dismiss Shellpoint's Counterclaims

Defendants

[ECF No. 6]

8 This case is a remnant of Nevada’s foreclosure crisis in which real-estate investors
9 snapped up homes for pennies on the dollar after the owners defaulted on their homeowner-
10 association (HOA) assessments. Plaintiff SFR Investments Pool 1, LLC, did just that in April
11 2012 when it bought this home at 747 Rustic Desert Place in Henderson, Nevada, for \$5,000 at
12 an HOA foreclosure sale.¹ The home had been purchased five years earlier with a \$259,700
13 mortgage secured by a deed of trust.² Years of quiet-title litigation in a separate federal action
14 ended in the determination that SFR bought the property subject to that deed of trust.³ But when
15 NewRez LLC dba Shellpoint Mortgage Servicing took steps to foreclose on that long-unpaid
16 mortgage last winter, SFR filed this wrongful-foreclosure action. Shellpoint responded with
17 counterclaims for quiet title, tortious interference with contractual relations, abuse of process,
18 slander of title, and equitable lien.⁴ SFR now moves to dismiss those counterclaims under FRCP

¹ ECF No. 22-3 (HOA trustee's deed upon sale).

² ECF No. 22-1 (deed of trust).

²² ³ See ECF No. 127 at 8 in 2:15-cv-2381-GMN-NJK (“Accordingly, the Court finds that the HOA sales did not extinguish Plaintiffs’ interests in the Properties, and the DOTs continue to encumber the same.”); ECF No. 150 in 2:15-cv-2381-GMN-NJK (affirming that ruling).
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⁴ ECF No. 4 (answer and counterclaim).

1 12(b)(6).⁵ Because I find that Shellpoint’s slander-of-title claim fails because Shellpoint is not a
 2 titleholder here, I dismiss that counterclaim but deny the remainder of SFR’s motion to dismiss.

3 **Discussion**

4 **A. *Quiet title***

5 SFR argues that Shellpoint’s quiet-title claim fails because “Shellpoint offers no
 6 independent adverse claim against SFR; it merely asks this Court to reject SFR’s claims,” so it’s
 7 “just a re-packaging of” Shellpoint’s defense.⁶ But that characterization understates the
 8 counterclaim’s allegations and SFR’s own position in this litigation. Shellpoint affirmatively
 9 seeks “a declaration that the deed of trust remains against the property . . . and SFR’s interest in
 10 the property, if any, is subject to the deed of trust.”⁷ And in its own quiet-title claim, SFR
 11 recognizes that “Shellpoint[] may claim an adverse interest in the Property through the Deed of
 12 Trust,” which is worthy of judicial determination.⁸ I thus find that Shellpoint has sufficiently
 13 stated its own quiet-title claim, and SFR’s request to dismiss that claim is denied.

14 **B. *Intentional interference***

15 In its second counterclaim, Shellpoint alleges that SFR’s “refusal to satisfy the amounts
 16 owed under the deed of trust” and its “pursuit of an injunction” to stop Shellpoint’s foreclosure
 17 efforts “are intentional and designed to disrupt the contractual relationship between the borrower

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 20 ⁵ ECF No. 6.

21 ⁶ *Id.* at 3.

22 ⁷ ECF No. 4 at 16.

23 ⁸ See ECF No. 1-1 at 8–10 (SFR’s second claim for relief); Nev. Rev. Stat. § 40.010 (noting that
 a quiet-title action “may be brought by any person against another who claims an estate or
 interest in real property, adverse to the person bringing the action, for the purpose of determining
 such adverse claim.”).

1 and Shellpoint,” and they have indeed accomplished that goal.⁹ SFR contends that Shellpoint’s
 2 intentional-interference-with-contract claim fails because “there must be an intentional act aimed
 3 at inducing the third party to breach the contract” to state such a claim.¹⁰ But the cases on which
 4 SFR relies imply that this tort is not so narrow. When outlining the elements of this claim in
 5 *Sutherland v. Gross*,¹¹ the Supreme Court of Nevada relied on the California Court of Appeal’s
 6 opinion in *Ramona Manor Convalescent Hospital v. Care Enterprises*.¹² The *Ramona Manor*
 7 court held that liability could be found when a lessee “intentionally retained possession rather
 8 than surrendering” leased premises to the landlord because “such action would frustrate the
 9 legitimate contractual expectations of” the new lessee.¹³ It also noted that, “[i]n recent years, the
 10 tort of ‘inducing breach of contract’ has expanded to permit liability where the defendant does
 11 not literally induce a breach of contract, but makes plaintiff’s performance of the contract ‘more
 12 expensive or burdensome’ or interferes with the formation of a prospective economic
 13 relationship.”¹⁴ This language suggests that the disruption-of-the-contractual-relationship
 14 element can be satisfied when the tortfeasor’s acts frustrate contractual expectations and not only
 15 when those acts induce a contractual breach. Because Shellpoint has alleged that SFR’s actions
 16 have frustrated its contractual right to foreclose, I find that Shellpoint has sufficiently pled this
 17 claim to survive dismissal.

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 20⁹ ECF No. 4 at 17.

21¹⁰ ECF No. 6 at 3.

22¹¹ *Sutherland v. Gross*, 772 P.2d 1287 (Nev. 1989).

23¹² *Ramona Manor Convalescent Hosp. v. Care Enter.*, 177 Cal. App. 3d 1120 (1986).

¹³ *Id.* at 1133.

¹⁴ *Id.* (cleaned up and internal citations omitted).

1 ***C. Abuse of process***

2 For its third cause of action, Shellpoint claims that SFR's filing and maintenance of this
 3 lawsuit and the tactics and arguments that it is pursuing here are an abuse of the judicial
 4 process.¹⁵ SFR moves to dismiss this claim, arguing that it fails because SFR's counsel's
 5 signature on the complaint certifies that "the claims are warranted," they are factually supported,
 6 and SFR promises that its only goal is "to resolve legitimate legal disputes."¹⁶ SFR's insistence
 7 that its motives are pure is not a valid basis to dismiss this claim. Shellpoint has pled sufficient
 8 facts to state a plausible abuse-of-process claim, and this court must take those facts as true when
 9 evaluating this Rule 12(b)(6) motion.¹⁷ That is enough at this point for this claim to proceed.

10 ***D. Slander of title***

11 The same cannot be said of Shellpoint's slander-of-title claim, however. Under Nevada
 12 law, a slander-of-title claim requires (1) false and malicious communications, (2) disparaging to
 13 one's title in land, (3) causing special damages.¹⁸ Although Shellpoint claims an interest in the
 14 Rustic Desert property, that interest is a lien. Shellpoint does not hold title, and it points to no
 15 case in which the Nevada Supreme Court recognized that a slander-of-title claim can be brought
 16 by a mere lienholder. So I grant SFR's motion to dismiss this claim and I do so without leave to
 17 amend because amendment would be futile.

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¹⁵ ECF No. 4 at 17–18.

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¹⁶ ECF No. 5 at 4–5.

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¹⁷ *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 572 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

¹⁸ See *Higgins v. Higgins*, 744 P.2d 530, 531 (Nev. 1987) (citations omitted).

1 **E. Equitable lien**

2 Finally, SFR moves to dismiss Shellpoint's equitable-lien claim, pled in the alternative
 3 should its quiet-title claim fail. Shellpoint's theory for this claim is that "SFR benefitted from
 4 the deed of trust encumbering the property" and the delays caused by the prior litigation and
 5 COVID, so if the deed of trust is deemed extinguished, it should have "a first-priority equitable
 6 lien in" its favor.¹⁹ SFR argues that this claim fails because "an equitable lien is only appropriate
 7 where a party keeps money belonging to another to purchase real property"—and because
 8 Shellpoint does not allege that SFR bought this property with someone else's funds, the claim
 9 fails as a matter of law.²⁰ But *Maki v. Chong*,²¹ on which SFR relies for this principle, does not
 10 confine the court's equitable powers to such narrow circumstances, and other equitable-lien
 11 cases from the Supreme Court of Nevada suggest that such liens may arise from situations
 12 unrelated to the wrongful use of funds to purchase property.²² So it does not appear that Nevada
 13 law limits equitable liens only to situations in which the defendant uses the plaintiff's funds to
 14 buy real property, and I deny the motion to dismiss this claim.

15 **Conclusion**

16 IT IS THEREFORE ORDERED that SFR Investments Pool 1, LLC's motion to dismiss
 17 counterclaims [ECF No. 6] is GRANTED in part: **NewRez LLC dba Shellpoint Mortgage**

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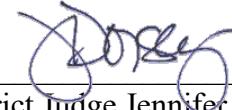
21¹⁹ ECF No. 4 at 19.

22²⁰ ECF No. 6 at 6.

23²¹ *Maki v. Chong*, 75 P.3d 376 (Nev. 2003).

²² See *Com. Credit Corp. v. Matthews*, 365 P.2d 303, 307–08 (Nev. 1961); *Gralnick v. Rowe-Gralnick*, 2016 WL 2851883, at *1 (Nev. 2016) (unpublished).

1 **Servicing's slander-of-title counterclaim is dismissed**, but the motion is denied as to all other
2 claims.



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4 U.S. District Judge Jennifer A. Dorsey
5 November 4, 2022
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